

APPENDIX

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

No. 75-5952

DETA MON¹ TRIMBLE AND JESSIE TRIMBLE,
Appellants,

—vs.—

JOSEPH ROOSEVELT GORDON, ET AL.
Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

FILED DECEMBER 22, 1975

PROBABLE JURISDICTION NOTED MARCH 22, 1976

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

No. 75-5952

DETA MONA TRIMBLE AND JESSIE TRIMBLE,
Appellants,

—vs.—

JOSEPH ROOSEVELT GORDON, ET AL.
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ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

- July 25, 1974 Petitioner Jessie Trimble's Petition For Letters of Administration, Determination of Heirship, Declaratory and Injunctive Relief
- August 12, 1974 Petitioner Jessie Trimble's Petition for Letters of Administration to Collect
- August 12, 1974 Order Appointing Jessie Trimble Administrator to Collect
- August 14, 1974 Heirship Hearing
- August 15, 1974 Order Denying Petitioner Jessie Trimble's Petition For Letters of Administration
- September 9, 1974 Order Declaring Heirship
- September 19, 1974 Notice Of Appeal To Illinois Appellate Court
- November 20, 1974 Docketing of Appeal
- February 14, 1975 Motion Under Illinois Supreme Rule 302(b) For Direct Appeal, and Motion For Leave Under Illinois Supreme Court Rule 345 to File AMICUS CURIAE Brief In Consolidated Case of IN RE ESTATE OF LOUIS KARAS and IN RE ESTATE OF ROBERT WOODS
- February 20, 1975 Order Entered In Illinois Supreme Court Allowing Motion For Direct Appeal and Granting Leave To File Brief Amicus Curiae in Case of IN RE ESTATE OF LOUIS KARAS and IN RE ESTATE OF ROBERT WOODS
- June 2, 1975 Opinion of Illinois Supreme Court, IN RE ESTATE OF LOUIS KARAS, IN RE ESTATE OF ROBERT WOODS, 61 Ill. 2d 40 (1975)
- September 24, 1975 Oral Argument Held Before Illinois Supreme Court, and Chief Justice Underwood Orally Delivered Opinion of Court

October 15, 1975 Written Order (Decision) of Illinois Supreme Court

October 21, 1975 Order of Justice Daniel Ward of Illinois Supreme Court Staying Mandate of that Court, Pending Resolution of Review of Judgment By The United States Supreme Court

November 17, 1975 Notice of Appeal To United States Supreme Court Filed In Illinois Supreme Court

December 22, 1975 Appeal and Motion to Proceed In Forma Pauperis Docketed

March 22, 1976 The Motion For Leave To Proceed In Forma Pauperis Granted, and Probable Jurisdiction Noted

2. PETITION FOR LETTERS OF ADMINISTRATION, DETERMINATION OF HEIRSHIP, DECLARATORY AND INJUNCTIVE RELIEF (INCLUDING PATERNITY ORDER)

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, PROBATE DIVISION

74P 5902

Hearing on Petition set for _____ 1974
_____ m., Room _____
Chicago Civic Center
Chicago, Illinois 60602

PETITION FOR LETTERS OF ADMINISTRATION
DETERMINATION OF HEIRSHIP
DECLARATORY AND INJUNCTIVE RELIEF

JESSIE TRIMBLE for and on behalf of her minor child DETA MONA TRIMBLE, on oath states:

1. ^{Sherman} ~~SAMUEL~~ GORDON, whose place of residence at the time of death was 3007 West Fillmore Street, Chicago, Cook County, Illinois, died May 24, 1974, at Chicago, Illinois leaving no will.

2. The approximate value of the estate in this state is personal property of \$4,000.

3. Decedent died leaving no spouse, DETA MONA TRIMBLE as his only descendant, his mother ETHEL KING, his brother WILLIAM GORDON, and on information and belief his father JOSEPH ROOSEVELT GORDON, address unknown, but believed to reside in Mississippi, and two sisters, whose names and addresses are unknown, but are believed to also reside in Mississippi.

4. Petitioner is mother and next friend of DETA MONA TRIMBLE, daughter of decedent, and is legally qualified to act as administrator or to nominate a resident of Illinois, on behalf of DETA MONA TRIMBLE.

5. DETA MONA TRIMBLE, born October 23, 1970, is the natural child of petitioner JESSIE TRIMBLE and decedent SHERMAN GORDON.

6. Petitioner JESSIE TRIMBLE and decedent SHERMAN GORDON were never intermarried.

7. On January 2, 1973, the Honorable WILLIE M. WHITING, Associate Judge of the Circuit Court of Cook County, entered an order, in the case of JESSIE TRIMBLE v. SHERMAN GORDON, 72 MC1-J846169, finding said SHERMAN GORDON to be the father of DETA MONA TRIMBLE. A certified copy of said order is attached hereto as Exhibit A.

8. Petitioner JESSIE TRIMBLE and decedent SHERMAN GORDON lived together with their child, DETA MONA TRIMBLE, from 1970 until his death. Decedent SHERMAN GORDON in his day-to-day activities publicly acknowledged DETA MONA TRIMBLE as his child, and supported her pursuant to the order attached hereto as Exhibit A.

9. The Illinois Probate Act, Illinois Revised Statutes Chapter 3, Section 12 provides in part:

An illegitimate child is heir of his mother and of any maternal ancestor, and of any person from whom his mother might have inherited if living . . .

By implication and interpretation said Section has been construed to mean that an illegitimate child is not an heir of its father.

10. Since decedent SHERMAN GORDON died without spouse and with only one descendant, DETA MONA TRIMBLE, if said DETA MONA TRIMBLE had been a legitimate child she would inherit the entire estate of decedent SHERMAN GORDON, according to the provisions of Sec. 11 of the Probate Act. As an illegitimate child, said DETA MONA TRIMBLE is not an heir of decedent SHERMAN GORDON, and would not inherit any of his property under the provisions and interpretations of Section 12 of the Illinois Probate Act.

11. For the State to provide by common law, statute or interpretation of statute that a legitimate child is the heir of its father, but an illegitimate is not the heir of its father, violates and contravenes the illegitimate

child's rights to due process and equal protection of the laws as guaranteed by Article I, Section 2 of the Constitution of the State of Illinois, and the Fourteenth Amendment to the Constitution of the United States.

12. Unless this honorable court provides the relief requested hereafter, DETA MONA TRIMBLE, will be denied due process and equal protection of the laws.

13. The assets of the estate of decedent SHERMAN GORDON include:

- a) A 1974 Plymouth Satellite automobile.
- b) On information and belief, wages owing to decedent, by his former employers MEL WOLF CHRYSLER PLYMOUTH, INC., and NATIONAL SECURITY COMPANY.

14. On information and belief decedent's mother, ETHEL KING and/or decedent's brother, WILLIAM GORDON, are in possession of said car, and have not filed any cause in probate, thus giving rise to the danger of dissipation of the assets of decedent's estate.

WHEREFORE, it is prayed that this Court

1. Decree, adjudge and declare DETA MONA TRIMBLE to be decedent's descendant and sole heir.

2. Declare the provision of Illinois Revised Statutes, Ch. 3 Sec. 12, relating to the heirship of illegitimate children null and void on its face and as applied to DETA MONA TRIMBLE for the reason that it violates Article I. Section 2 of the Constitution of the State of Illinois, and the Fourteenth Amendment to the Constitution of the United States.

3. Appoint petitioner, JESSIE TRIMBLE, administrator of decedent SHERMAN GORDON's estate, as mother and next friend of DETA MONA TRIMBLE.

4. Enter preliminary and permanent injunctions enjoining decedent's mother, ETHEL KING, and decedent's brother, WILLIAM GORDON, from using or disposing of decedent's automobile.

5. Order a court supervised sale of said automobile, with proceeds to be put in court supervised escrow pending ultimate disposition of the estate of decedent.

6. Enter preliminary and permanent injunctions enjoining decedent's mother ETHEL KING, and decedent's brother, WILLIAM GORDON, from disposing of any of the other assets of decedent SHERMAN GORDON's estate, and to turn over said assets to administrator.

7. Enter an authorization to appraise goods and chattels to Edward Anderson.

/s/ Jessie Lee Trimble
JESSIE TRIMBLE

(Jurat omitted in printing)

EXHIBIT A

THE UNITED STATES OF AMERICA

In The Circuit Court of Cook County, Illinois
Municipal Department, First District

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

Pleas, Proceedings and Judgments, before The Circuit Court of Cook County, Illinois, in the City of Chicago, in the County of Cook and State of Illinois, in the year of our Lord, one thousand nine hundred and SEVENTY THREE and the Independence of the United States, the one hundred and NINETY SEVENTH

Present: Honorable WILLIE M. WHITING

BERNARY CAREY, State's Attorney
RICHARD J. ELROD, Sheriff

Attest: MATTHEW J. DANAHER, Clerk.

Be it Remembered, to wit: that on the 2nd day of JANUARY 1973, the following among other proceedings were had in said court and entered of record therein, to-wit:

No. 72 MC1 J846169

CRIMINAL

THE PEOPLE OF THE STATE OF ILLINOIS EX REL
JESSIE TRIMBLE

v.

SHERMAN GORDON

DRAFT ORDER

PATERNITY DRAFT ORDER

No. J-846169

STATE OF ILLINOIS)
) ss
 COOK COUNTY)

ENTERED IN SPECIAL ORDER BOOK #95
 PAGE #165

IN THE CIRCUIT COURT,
 COOK COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS EX REL
 JESSIE TRIMBLE

v.

SHERMAN GORDON

ORDER

This matter having come on to be heard upon complaint signed by the relatrix, the defendant being present in open court in his own proper person and having (admitted) the paternity of the child born out of wedlock and (having waived) examination of relatrix and the Court having held defendant to trial on the issue and upon the evidence duly presented the Court doth find the defendant Sherman Gordon guilty of being the father of the child Deta born out of wedlock 10-23 1970 (based on findings).

It is ordered that the plaintiffs have judgment on the (finding) herein, and that the defendant is the real father of the child Deta of the relatrix herein, which was born out of wedlock on 10-23 1970.

Further, the Court having heard evidence upon the requirements of the said child for its support, maintenance, education and welfare, and upon the expenses of the mother during her pregnancy, confinement and

recovery, and having taken into account financial condition and circumstances of the defendant and the income and resources of the mother which are or may be available for the support of said child.

IT IS HEREBY ORDERED, ADJUDGED AND DIRECTED THAT DEFENDANT PAY TO the Clerk of this Court the sum of 15.00 Dollars per week commencing 1-5-73 as and for the support maintenance, education and welfare of the said child until further order of this Court, and monies to be paid over to the relatrix (or) _____ as received.

SUBJECT TO FURTHER ORDER OF THE COURT.

IT IS FURTHER ORDERED, ADJUDGED AND DIRECTED that the defendant pay to relatrix or _____ the sum of _____ dollars as and for the expense of the mother during pregnancy, confinement and recovery as follows:
 DATED: 1-2-73

ENTER:

/s/ [Illegible]
 Judge

STATE OF ILLINOIS)
) ss.
 COUNTY OF COOK)

I, MATTHEW J. DANAHER, Clerk of the court and the keeper of the records and files thereof, in the City and State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of certain proceedings made and entered of record in said Court in a certain cause lately pending in said Court, between THE PEOPLE OF THE STATE OF ILLINOIS EX REL JESSIE TRIMBLE plaintiff and SHERMAN GORDON defendant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, aforesaid, JUNE 14, 1974.

/s/ Matthew J. Danaher
 Clerk

(Certificate of service omitted in printing)

3. ORDER APPOINTING JESSIE TRIMBLE ADMINISTRATOR
 To Collect

IN THE CIRCUIT COURT OF
 COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT—PROBATE DIVISION

No. 74 P 5902

Docket 797

Page 76

[Filed Aug. 12, 1974, Matthew J. Danaher,
 Clerk of the Circuit Court]

Estate of SHERMAN GORDON Deceased

ORDER APPOINTING LEGAL REPRESENTATIVE OF
 DECEDENT'S ESTATE

On the verified petition of JESSIE TRIMBLE for issuance of letters as legal representative to JESSIE TRIMBLE who has presented her bond which has been approved, or its acceptance of office,

It is ordered that letters * of Administration to Collect issue to JESSIE TRIMBLE and that an authorization to appraise goods and chattels issue to Edward Anderson.

_____, 19 ____

ENTER:

Judge

Name Devereux Bowly
Attorney for petitioner
Address 911 S. Kedzie Avenue
City Chicago, Illinois 60612
Telephone 638-2343

MATTHEW J. DANAHER
Clerk of the Circuit Court

ANTHONY G. GIROLAMI
Associate Clerk, Probate Division

* Insert "testamentary," "of administration," "of administration to collect," "of administration de bonis non," "of administration with the will annexed" or "of administration de bonis non with the will annexed".

4. ORDER DENYING JESSIE TRIMBLE'S PETITION FOR LETTERS OF ADMINISTRATION

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—PROBATE

No. 74 P 5902

[Filed Aug. 15, 1974, Matthew J. Danaher,
Clerk of the Circuit Court

ESTATE OF SHERMAN GORDON, Deceased.

v.

ORDER

Petition for Letters of Administration by Jessie Trimble being represented by counsel, and after hearing on said petition it is hereby ordered said petition be denied.

Counsel for petitioner is hereby ordered to prepare and present an order determining heirship upon the filing of the transcript of testimony adduced in open court on August 14, 1974, as to the heirs of the decedent.

_____, 19 ____

ENTER:

Judge

Name Devereux Bowly & Charles A. Linn
Attorneys for Petitioner
Address 911 S. Kedzie Avenue
City Chicago, Illinois 60612
Telephone 638-2343

MATTHEW J. DANAHER
Clerk of the Circuit Court of
Cook County

5. ORDER DECLARING HEIRSHIP

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

County Department, Probate Division

No. 74 P 5902

Docket 797

Page 76

Estate of SHERMAN GORDON, Deceased

ORDER DECLARING HEIRSHIP

After considering evidence concerning heirship, the court declares that SHERMAN GORDON, deceased, left surviving as his only heirs:

1. JOSEPH ROOSEVELT GORDON, his father;
2. ETHEL MAE KING, his mother;
3. WILLIAM GORDON, husband of Deborah Gordon, his brother;
4. HELLIE MAE GORDEY, wife of Robert Gordey, his sister;
5. MARY LOIS GORDON (MARRIAGE NAME UNKNOWN, his sister;
6. HOWARD KING, JR., his half-brother;
7. Unknown heir or heirs at law, if any, if living, whose name or names, address or addresses are unknown and upon due and diligent search and inquiry have not been ascertained;

HIS ONLY HEIRS AT LAW AND NEXT OF KIN.

_____, 19 ____

ENTER:

Judge

Devereux Bowly
911 South Kedzie
Chicago, Illinois

MATTHEW J. DANAHER
Clerk of the Circuit Court

ANTHONY G. GIROLAMI
Associate Clerk, Probate Division

6. RECORD OF PROCEEDINGS IN TRIAL COURT

STATE OF ILLINOIS)
) ss:
 COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
 COUNTY DEPARTMENT—PROBATE DIVISION

No. 74 P 5902

Docket 797

Page 76

In the Matter of the Estate of
 SHERMAN GORDON, deceased

TESTIMONY TAKEN in the Circuit Court of Cook County, County Department, Probate Division, Judge Robert C. Springsguth presiding on the 14th day of August, 1974, in the matter of PROOF OF HEIRSHIP in the above-named estate.

IN ATTENDANCE:

Mr. Robert C. Springsguth, Judge.

APPEARANCES:

Mr. Fred Klinsky, for Ethel King;

Mr. Devereux Bowly & Mr. Charles Linn,
 for Jessie Trimble.

[2] THE COURT: You may proceed.

MR. BOWLY: Good morning, your Honor, my name is Devereux Bowly, I am attorney with the Legal Assistance Foundation, my colleague is Charles Linn, our office is 911 South Kedzie, Chicago, Illinois and we are here this morning on behalf of the petitioner Jessie Trimble.

I wanted to just say a word or two about the case to put it in context because I think it might be more complicated than it looks.

The decedent in this case was a gentleman by the name of Sherman Gordon. He had only one child whose name is Deta Mona Trimble, she is about four-years old.

Mr. Gordon was never married, the child was commonly known as an illegitimate child. Our petitioner is the mother of the child and her name is Jessie Trimble. Mr. Gordon died on May 24, 1974.

As far as we know at this time the estate consists basically of a new car worth maybe up to \$4,000. The only descendant of Mr. Gordon when he died is this child, Deta Mona Trimble. There is no question about the paternity of the child [3] there is a court order appended to the petition by Judge Whiting of the Circuit Court of Cook County, that found, as a matter of law, that the decedent was, in fact, the father of Deta Mona Trimble.

We are aware that in the past under the Illinois Statute illegitimate children had not been allowed to inherit from their father's, but it is our position that the statute that so provides in Illinois is a true contravention of the equal protection of the State's constitution and the United States Constitution and you are required under the two constitutions to find that the only heir at law of the decedent's is this small child, Deta Mona Trimble.

Just to say a few words about equal protection, if when the man had died, if the child had been legitimate and if she would have inherited everything, if an legitimate child survives her father and there was no spouse, the child would have inherited everything.

We contend the mere fact that the child was illegitimate cannot change her status under the equal protection clause and cannot deprive her of the property.

[4] THE COURT: Who do you represent?

MR. KLINSKY: I am representing the mother, Ethel King.

THE COURT: Do you have a statement?

MR. KLINSKY: Yes.

MR. BOWLY: Just to complete the record, I think it should reflect that we were before you on August 7. At that time Ethel King and the decedent's brother, William Gordon, appeared in court, asked for a continuance to get an attorney. We did not object to that and the case was continued until today.

Also I would like to bring the Court up-to-date on one other development. You may have remembered the first time we were in court, the matter of the car, the possible dangers to the car and so on were discussed, at the suggestion of your Honor, we appeared before Judge Kogut, who was substituting for Judge Dunne and have secured an order appointing our client, Jessie Trimble, the administrator to collect the estate.

We intend, pursuant to that order, we intend to get the car, make sure the insurance proceeds are paid off to sell the car and then put the proceeds in an interest bearing account, pending [5] the outcome of this litigation.

MR. KLINSKY: My name is Fred Klinsky, 188 West Randolph Street, I represent Ethel King, the mother of the decedent.

At this time we would like to show that Mr. Gordon's correct address was 2932 West Polk Street in Chicago, shows by his records from the Internal Revenue Service and also his driver's license that is the address of his mother and lived there continuous since 1969.

In Paragraph 4, the petitioner alleges that, "petitioner is mother and next friend of Deta Mona Trimble, daughter of decedent and is legally qualified to act as administrator or to nominate a resident of Illinois, on behalf of Deta Mona Trimble."

According to the statute of priority this wouldn't be correct and I think the mother should be appointed.

The child has no status. They specifically set out in Chapter—in Paragraph 9 that the child is not an heir of the father by the Illinois law and I think this point in case was quite clear on this. I don't see any standing for [6] this particular petitioner at all.

I'll stand by the statute on this particular matter.

MR. BOWLY: Before I address his argument on the merits, let me say, first of all that Jessie Trimble is the one who has been appointed administrator, not the four-year old child.

MR. KLINSKY: I made a mistake.

MR. BOWLY: Secondly, as far as the matter of administrator, I don't think that is properly before the Court now.

In any event, we will offer proof that he did, in fact, live with Jessie Trimble, but used his mother's address as his mailing address.

We are merely here this morning on heirship hearing and I think those matters he is bringing—

THE COURT: Who is going to testify to the heirship?

MR. LINN: We have Jessie Trimble to testify.

THE COURT: Swear the witness.

(Witness sworn)

[7] JESSIE TRIMBLE called as a witness herein, and after having been first duly sworn, was examined and testified as follows:

EXAMINATION BY THE COURT:

Q Your name is?

A Jessie Lee Trimble.

Q Your address is?

A 3007 West Filmore.

Q Are you related to Sherman Gordon?

A A friend.

Q A what?

A A friend, he was my common law husband, but that don't count.

Q You can't testify under the rules of court unless you have an affidavit for non-relative to testify.

A I said I was a friend.

MR. KLINSKY: Your Honor, there is a relative in court, the decedent's mother is here.

THE COURT: Let her testify.

(Witness sworn)

[8] ETHEL KING called as a witness herein, and after having been first duly sworn, was examined and testified as follows:

EXAMINATION BY THE COURT:

Q Your name, please?

A Ethel Mae King.

Q Ethel Mae King?

A Right. I live at 2932 West Polk Street.

Q Were you related to Sherman Gordon?

A I am his mother.

Q When did he die?

A May 23, 1974.

Q How old was he when he died?

A 28.

Q And his home address when he died was?

A The same, 2932 West Polk Street.

MR. BOWLY: This is a point in controversy.

THE COURT: Q How many times was he married?

A He never been married.

Q Did he have or adopt any children?

A No.

[9] Q His father's name was?

A Joseph Roosevelt Gordon.

Q Is he living?

A Yes, he is.

Q How many times was he married?

A Twice.

Q His first wife's name was?

A Ethel Mae Gordon.

Q Is she living?

A Yes, she is here.

MR. KLINSKY: That is her, that is what she is saying.

THE COURT: Were you divorced?

A Yes.

Q How many children were born of your marriage?

A Four.

Q Any of those children, four children die at infancy or under the age of ten?

A No.

Q Name one of the children?

A William Gordon.

Q Living?

A Yes.

Q Over 18?

[10] A Yes.

Q Married?

A Yes.

Q Wife's first name?

A Deborah Gordon.

Q She's living?

A Yes.

Q Name another child born of your marriage.

A Hellie Mae Gordon, H-e-l-l-i-e.

Q Is she living?

A Yes, she is.

Q She's over 18?

A Yes, she is.

Q Married?

A Yes.

Q Husband's name?

A (No response).

Q You don't know his name?

A I think his name is Robert, they don't live here.

Q Do you know his last name?

A G-o-r-d-e-y.

Q Is he living?

A Yes, he is.

[11] Q Name another one of your children.

A Mary Lois Gordon.

Q Is she living?

A Yes, she is.

Q She is over 18?

A Yes.

Q Married?

A Yes, she is.

- Q Husband's name?
 A I can't remember his name.
 Q You don't know his name?
 A No.
 Q You don't know his last name?
 A No.
 Q Is he living?
 A Yes, he is.
 Q And the other child of your marriage was?
 A That is the four I have.
 Q Was there another?
 A The one who is dead made four.
 Q Did you and your husband Joseph ever adopt any children?
 A No, we didn't.
 Q Was there any other children born to [12] yourself during your lifetime besides—
 A Yes, there is by my husband now.
 Q Joseph Gordon's second wife's name was—I withdraw that question.
 How many other children were born to you besides these four children?
 A I have one more.
 Q The name?
 A Howard King, Jr.
 Q Is he living?
 A Yes, he is.
 Q He is over 18?
 A He is 13.
 Q And Joseph Gordon's second wife's first name was?
 A I don't know his second wife.
 Q Is she living?
 A I don't know that.
 Q Do you know how many children were born of the second marriage?
 A No, I don't.
 Q Were there any children adopted?
 A I don't know.
 Q How many times have you been married?

- [13] A Two times.
 Q And your first husband's name was Joseph?
 A Roosevelt Gordon.
 Q The second husband?
 A Howard King.
 Q Is he living?
 A Yes, he is.
 Q And there is one child born of that marriage?
 A That is right.
 Q No children adopted?
 A No.
 Q Was there any other children born to yourself during your lifetime?
 A No, we don't—
 THE COURT: We have a lot more heirs here, don't we?
 MR. BOWLY: There was a half-brother we didn't know about.
 THE COURT: Any questions you want to ask?
 MR. LINN: I have a couple of questions I was going to ask Mrs. King.

[14] CROSS EXAMINATION BY MR. LINN:

- Q Mrs. King, did you testify that the decedent had no children?
 A No, I didn't say that.
 Q How many children did the decedent Sherman Gordon have?
 A Only one I know. Her name is Deta Mona and I couldn't swear to that at all.
 MR. KLINSKY: She is saying she only heard that he had one child, this child that they are claiming.
 MR. LINN: I am determining whether the decedent died leaving any children.
 Q You the testifying that Sherman Gordon had on child?
 MR. KLINSKY: Objection.
 THE COURT: Sustained. Statute says an illegitimate child is not an heir of the father.

MR. LINN: We are testing the validity of the statute in order to attack that statute. I think we are entitled to show there is an illegitimate child here.

[15] MR. KLINSKY: The statute is very clear who is the heir of the proceeding.

MR. BOWLY: The statute does not say that an illegitimate child is not the heir of the father, it just says the child does not inherit. I think we still have latitude here to discuss the child, to ask the witness about the child and so on.

THE COURT: What is your question?

MR. LINN: The question is, did Sherman Gordon have any children?

You answered yes, I believe, is that right, Mrs. King?

A My knowing, he said he had one little girl, was named Deta Mona.

MR. KLINSKY: Object to this again.

MR. BOWLY: I think the objection is a little late.

THE COURT: Objection overruled.

MR. LINN: To clarify the record, would that be Deta Mona Trimble?

A I heard that, I really don't know.

MR. LINN: Do you know the mother of that child?

A There she is standing, (indicating).

Q For the record you are indicating [16] Jessie Trimble.

THE COURT: The mother would be a better witness.

MR. LINN: We will put her on.

Q You are indicating Jessie Trimble, is that right?

A About what?

Q As being the mother of Deta Mona Trimble?

A Yes.

MR. LINN: I have no further questions.

Can we swear in—

THE COURT: She's already been sworn.

JESSIE TRIMBLE recalled as a witness herein, and after having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. LINN:

Q State your name and address?

A Jessie Trimble, 3007 West Filmore.

Q Did you know the decedent in this matter?

A Yes, I did.

THE COURT: What is his name?

THE WITNESS: Sherman Roosevelt Gordon.

[17] MR. LINN: Did you and he live together?

A Yes, we did.

Q For how long a period of time?

A Five years.

Q During that time did you have any children?

A Yes, one.

Q What is the name and age of that child?

A Deta Mona Trimble.

Q And the father of that child was?

A Sherman Roosevelt Gordon.

Q Were you ever in Court to determine the paternity of the child that you had?

A Yes.

Q When was that, can you recall?

A I can't remember the exact date.

THE COURT: I didn't hear you.

THE WITNESS: I don't recall the exact date.

MR. LINN: Q Can you recall approximately how long ago that might have been?

A Oh, about three years ago.

Q To refresh your recollection I show you [18] a copy of an order entered by Judge Willie Whiting, January 2, 1973, does that refresh your recollection as to any court appearance you may have been at to determine the paternity of Deta Mona Trimble?

A Yeah, I know we went to court down at 11th and State and then over to Branch 33 on Chicago Avenue.

Q And can you tell this Court the result of that hearing?

A Yes, the Judge asked him was Deta Mona Trimble his daughter and Sherman Gordon said yes.

MR. KLINSKY: I object to that.

THE COURT: The objection is sustained and may be stricken. This record speaks for itself.

MR. LINN: Simply having her testify of her recollection as to what occurred. Want to introduce the copy of the order, it is attached to the petition, I'll ask that it be entered into the record as an official document of a prior order.

THE COURT: We take judicial notice of that order.

MR. LINN: Q Now, for the past five years you—well, where does Deta live?

A 3007 West Filmore.

Q Up until the time of his death where did [19] Sherman Gordon live?

A 3007 West Filmore.

Q Did he in his everyday action acknowledge Deta Mona as his daughter?

A Yes, he did.

MR. LINN: I have no further questions.

DIRECT EXAMINATION (continued)

BY MR. BOWLY:

Q There has been some discussion of a Polk Street address, was that his mother's address?

A Yes.

Q Did he, in fact, put that address on his business papers?

A Yes.

Q Why?

A Because I moved quite a bit during the time we had been together. He never changed his mailing address.

Q He stayed with you?

A Yes, he did.

Q Now, when he died what property did he have?

A He had a car, a brand new car, 1974, as [20] far as I know.

Q You never married him?

A No, we didn't.

Q Did you ever talk to him about marriage?

A Yes.

MR. KLINSKY: I object to this, your Honor.

THE COURT: What is the purpose of this?

MR. LINN: We will withdraw the question.

MR. BOWLY: I have no further questions at this time.

MR. KLINSKY: We have no questions of this witness.

THE COURT: Anything else?

MR. BOWLY: Nothing else.

THE COURT: What is your motion?

MR. KLINSKY: Motion is that this petition be stricken, your Honor.

THE COURT: On what grounds?

MR. KLINSKY: On the grounds the child is not an heir of the father and the lawful heirs should be issued letters testamentary to the mother of this particular case. The child has no standing in court, that is supposedly, this woman of this child, the mother has no standing in this Court.

[21] MR. LINN: I object to Counsel's motion, if only on the grounds that there is no counter petition before this Court. The only petition before your Honor is to appoint Jessie Trimble as administrator of the estate and I would also like to point out Jessie Trimble, whose already been appoint by Judge Kogut administrator to collect the estate and we would like in open court the acknowledgement of this order and an agreement to turn over the assets of the estate pending the final determination of this litigation.

MR. KLINSKY: I object to this, I just got into the case. We will object to that order, we will present a petition to vacate that order.

THE COURT: As far as the administrator is concerned doesn't have to be necessarily an heir, any person in interest could be an administrator to collect. This petition does not follow the statute. The statute says who could be appointed administrator of the estate and no where in the statute does it say mother of illegitimate child can be appointed administrator of the estate of the father.

[22] MR. LINN: Any qualified adult may be appointed administrator subject to the duties of that office.

THE COURT: Where did you see that?

Here is the statute.

MR. LINN: I don't think there is anything that prevents our client as being appointed administrator.

MR. BOWLY: The petition is here petitioning not as a common law wife or any status like that but as the next friend and mother of the only child of the decedent and so in that capacity as the next friend and mother of the only child and we think the court is constrained and required by the United States and Illinois Constitution to hold any Illinois law unconstitutional which would prohibit the child or child's next friend of being administrator.

THE COURT: I agree with that and we have that statute who could be appointed administrator starting with the spouse, children, mother, father, then goes down to the executor, public administrator—

MR. BOWLY: Any provision, whether it be by statute or court interpretation, would prohibit the illegitimate child so named is illegal unconstitutional [23] and because of the constitutional mandate we believe you have to appoint the petitioner here as next friend and mother of child—

MR. LINN: Clearly the mother of a minor would be qualified to act on her behalf.

THE COURT: No. That is the only fault I find with this petition.

You have to follow the statute. The statute is very clear.

MR. LINN: I would—under that Section 2, sub Section 296, that the children or any other person nominated by them are entitled to collect.

THE COURT: This is a minor. The minor has no power to be administrator. You have to have somebody who is related or public administrator file a petition and I will be glad to consider it, but your off base right on this.

MR. LINN: It is my understanding of the law that the mother of a minor is qualified in any legal pro-

ceeding to act on behalf of that minor in any legal action.

THE COURT: It's never been done in the probate court. You are talking about a personal injury accident where the next friend files a suit.

[24] You think that applies in this matter?

MR. LINN: In this particular situation—

THE COURT: It doesn't follow the statute. I can't overcome that. Nowhere in the statute does it say next friend of a minor is appointed administrator.

MR. BOWLY: Is there not a procedure where the public administrator—I am not sure of the right word, "waiver"—

THE COURT: Sure.

MR. BOWLY: Would it be appropriate for us to continue this case and seek a waiver?

THE COURT: What good would that do?

MR. KLINSKY: We still have somebody in line.

THE COURT: Do you want to file a petition?

MR. KLINSKY: We will file a petition.

THE COURT: That will solve your matter. You want to file a petition to have this party added as an heir, but this petition is faulty in form. Can't have a next friend be appointed administrator.

MR. KLINSKY: According to the statute this party has no standing in court. Under the law the person has no standing according to the case law.

THE COURT: That is what I am trying to get over.

[25] MR. KLINSKY: I think we have a mute point with the petition altogether. There is a mute point according to the statute, I don't know what we are arguing. I think this whole petition should be dismissed.

THE COURT: What is your motion?

MR. KLINSKY: I move that this petition be dismissed.

THE COURT: Could you write such an order?

MR. KLINSKY: Yes, I will.

MR. BOWLY: We certainly would oppose such a motion for the reason we stated before and I would like to inquire how that would affect the fact Jessie

Trimble has already been appointed administrator? So, it is the law that the administrator to collect can proceed.

THE COURT: Sure.

MR. BOWLY: Until an administrator is appointed. Okay.

(Which were all the proceedings had in the above-entitled matter.)

7. NOTICE OF APPEAL To ILLINOIS APPELLATE COURT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

APPEAL TO APPELLATE COURT— FIRST DISTRICT FROM THE CIRCUIT COURT OF COOK COUNTY COUNTY DEPARTMENT, PROBATE DIVISION

No. 74 P 5902

Docket 797

Page 76

IN THE MATTER OF THE ESTATE OF
SHERMAN GORDON, Deceased

NOTICE OF APPEAL

JESSIE TRIMBLE, for and on behalf of her minor child DETA MONA TRIMBLE, by one of her attorneys Devereux Bowly, hereby appeals from the Order Declaring Heirship entered September 9, 1974, in the above captioned cause, and prays that said order be reversed and remanded with directions that DETA MONA TRIM-

BLE be adjudged and declared to be the sole heir of decedent, Sherman Gordon.

Respectfully submitted

Devereux Bowly
and
Charles Linn
Legal Assistance Foundation of Chicago
911 S. Kedzie Avenue
Chicago, Illinois 60612
638-2343

Of Counsel:

John Henry Schlegel
Faculty of Law Jurisprudence
State University of New York at Buffalo
John Lord O'Brian Hall
Buffalo, New York 14260

Jane Stevens and James Weill
Legal Assistance Foundation
64 East Jackson Blvd.
Chicago, Illinois 60604

(Certificate of service omitted in printing)

8. MOTION FOR DIRECT APPEAL TO ILLINOIS SUPREME COURT, AND TO FILE AMICUS CURIAE BRIEF

APPEAL TO THE SUPREME COURT OF ILLINOIS
FIRST DISTRICT FROM
THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

Appellate Court No. 61137

Trial Court No. 74 P 5902

[Received Feb. 14, 1975, Clerk, Supreme Court]

IN RE ESTATE OF SHERMAN GORDON, Deceased,
DETA MONA TRIMBLE, and JESSIE TRIMBLE,
PETITIONERS-APPELLANTS

—vs—

JOSEPH ROOSEVELT GORDON, ETHEL MAE KING, WILLIAM GORDON, HELLIE MAE GORDEY, and MARY LOIS GORDON, RESPONDENTS-APPELLEES

MOTION UNDER SUPREME COURT RULE 302(b)

DETA MONA TRIMBLE and JESSIE TRIMBLE, Petitioners-Appellants, through one of their attorneys Devereux Bowly, pursuant to Supreme Court Rule 302 (b), respectfully request the Supreme Court of Illinois to accept the direct appeal of the above-entitled cause for prompt adjudication as it is a case in which the public interest requires expeditious determination. In support of said motion, movants state as follows:

1. That there is now pending in the Illinois Supreme Court, the case of IN RE ESTATE OF LOUIS KARAS, Deceased, filed on September 9, 1974, under case number 46986.

2. That it has come to our attention that the case of IN RE ESTATE OF ROBERT WOODS has been con-

solidated into the case of IN RE ESTATE OF LOUIS KARAS, number 47092.

3. That the instant case, and the cases of IN RE ESTATE OF LOUIS KARAS, and IN RE ESTATE OF ROBERT WOODS all involve the interpretation of Illinois Revised Statutes, Ch. 3, Sec. 12(8) wherein it is provided that illegitimate children only inherit from their mothers. All three cases involve constitutional challenges to the disinheritance of illegitimate children from their fathers.

4. That movants believe that the fact situation in the instant case may more clearly illustrate defects in the statute cited, than in the two cases now pending in the Illinois Supreme Court. The movants believe further, that they are raising legal arguments that may not have been raised in the pending cases, and that a full adjudication of the statute cited would be assisted by permitting immediate appeal of the instant case.

5. That movants have filed their appeal in the Appellate Court of Illinois, First District, No. 61137 and will file their Brief and Designation of Excerpts From Record there on February 21, 1975.

WHEREFORE, DETA MONA TRIMBLE and JESSIE TRIMBLE, respectfully moves that this Honorable Court enter an order directing the appeal of their case to be taken directly by the Illinois Supreme Court and that the cases of IN RE ESTATE OF LOUIS KARAS and IN RE ESTATE OF ROBERT WOODS, be consolidated with it, in accordance with the prepared draft order hereto attached.

If this Honorable Court sees fit and to grant this motion, then DETA MONA TRIMBLE and JESSIE TRIMBLE move in the alternative, for leave under Rule 345, to file a brief AMICUS CURIAE in the cases of

IN RE ESTATE OF LOUIS KARAS and IN RE ESTATE OF ROBERT WOODS.

Respectfully submitted,

Devereux Bowly
One of the Attorneys for Movants
Legal Assistance Foundation of Chicago
911 S. Kedzie Avenue
Chicago, IL 60612
(312) 638-2343

(Notice of filing and Certificate of Service
omitted in printing)

9. LETTER FROM ILLINOIS SUPREME COURT GIVING NOTIFICATION OF ORDER ALLOWING DIRECT APPEAL AND GRANTING LEAVE TO FILE AMICUS CURIAE BRIEF

[SEAL]

STATE OF ILLINOIS
OFFICE OF CLERK OF THE SUPREME COURT
Springfield
62706

February 20, 1975

[Received Feb. 21]

CLELL L. WOODS
Clerk

Telephone
Area Code 217
782-2035

Mr. Devereux Bowly
Attorney at Law
Legal Assistance Foundation of Chicago
911 S. Kedzie Avenue
Chicago, Illinois 60612

In re: Deta Mona Trimble, et al., appellants, vs.
Joseph Roosevelt Gordon, et al., appellees.
No. 47339

Dear Mr. Bowly:

This office has today received and filed, under docket number 47339, your notice, motion, statement in support of motion, objections to certain portions of the motion, and order entered by Justice Daniel P. Ward (1) allowing the motion by appellants for direct appeal under Rule 302(b) in the above cause; (2) denies that part of the motion to consolidate this case with consolidated cases Nos. 46986-47092, and (3) grants leave to appellants to file a brief in the nature of a brief amicus curiae on or before March 5, 1975, in consolidated cases Nos. 46986-47092.

A certified copy of this order has today been forwarded to the Clerk of the Appellate Court, First District, and the Clerk of the Circuit Court of Cook County.

Very truly yours,

/s/ CLELL L. WOODS
Clerk of the Supreme Court

CLW:gn

cc—Attys. Burditt and Calkins
Atty. Mary Reardon Hooton
Atty. Gerald W. Shea

P.S. Mr. Bowly: At your early convenience, may we ask that you please forward the \$25.00 statutory docket fee.

10. OPINION OF ILLINOIS SUPREME COURT, IN RE ESTATE OF LOUIS KARAS, IN RE ESTATE OF ROBERT WOODS

SUPREME COURT OF ILLINOIS
UNITED STATES OF AMERICA

STATE OF ILLINOIS)
)
SUPREME COURT) ss.

OPINION

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of May in the year of our Lord, one thousand nine hundred and seventy-five, within and for the State of Illinois.

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE
 JUSTICE WALTER V. SCHAEFER
 JUSTICE DANIEL P. WARD
 JUSTICE JOSEPH H. GOLDENHERSH
 JUSTICE THOMAS E. KLUCZYNSKI
 JUSTICE CHARLES H. DAVIS
 JUSTICE HOWARD C. RYAN

WILLIAM J. SCOTT, ATTORNEY GENERAL

WILLIAM G. LYONS, MARSHAL

ATTEST: CLELL L. WOODS, CLERK

Be it Remembered, that afterwards, to-wit, on the 2nd day of June, 1975 the opinion of the Court was filed in said case and entered of record in the words and figures following, to-wit:

No. 46986
47092
Cons.

MARY SODERMARK, et al., APPELLANTS

vs.

EVANGELIA KARAS, et al., APPELLEES

APPEAL FROM APPELLATE COURT FIRST DISTRICT

CLELL L. WOODS
Clerk of the Supreme Court
State of Illinois

In re ESTATE OF LOUIS KARAS.—(Mary Sodermark, Appellant, v. Evangelia Karas, Appellee.)—*In re* ESTATE OF ROBERT WOODS.—(Margaret Marie Collins, Appellant, v. Addie Wheeler, Adm'r, Appellee.)

MR. JUSTICE KLUCZYNSKI delivered the opinion of the court:

These consolidated appeals present the common issue of whether an acknowledged illegitimate child may inherit from her father who died intestate never having married the child's mother. A subsidiary issue involves the right of an illegitimate to be appointed the administrator of the estate under these circumstances.

The relevant sections of the Probate Act read as follows:

"Sec. 12. Illegitimates.

* * *

An illegitimate child is heir of his mother and of any maternal ancestor, and of any person from whom his mother might have inherited, if living; and the lawful issue of an illegitimate person shall represent such person and take, by descent, any estate which the parent would have taken, if liv-

ing. A child who was illegitimate whose parents intermarry and who is acknowledged by the father as the father's child is legitimate." Ill. Rev. Stat. 1973, ch. 3, par. 12.

"Sec. 96. Persons entitled to preference in obtaining letters.) The following persons are entitled to preference in the following order in obtaining the issuance of letters of administration * * *:

* * *

(2) The children or any person nominated by them." Ill. Rev. Stat. 1973, ch. 3, par. 96.

In cause No. 46986 Louis Karas died intestate. The circuit court of Cook County entered an order declaring Evangelia Karas, his widow, to be his only heir-at-law. Thereafter Mary Sodermark, petitioner, sought to vacate the order of heirship claiming that she was the child of Louis Karas and Estelle Ross, who never married. The Sodermark petition alleged that Estelle Ross had been institutionalized for psychiatric reasons and apparently upon her release had disappeared. The petition further averred that Mary Sodermark had been acknowledged as the child of Louis Karas and that he had contributed to her support while she lived with an aunt. The petition asserted that Louis Karas and his wife, Evangelia, lived for a time with Mary Sodermark, her husband and family and that Louis Karas had contributed a downpayment to the purchase of the Sodermark's house. The circuit court granted Evangelia's motion to strike and dismiss the Sodermark petition. The appellate court affirmed (*In re Estate of Karas*, 21 Ill. App. 3d 564), and we granted leave to appeal.

In cause No. 47092 Robert Woods died intestate at the age of 81. He left no surviving spouse and no legitimate children or descendants thereof. The circuit court of Cook County determined that there existed certain collateral heirs-at-law of the deceased. Margaret Marie Collins, petitioner, then attempted to obtain letters of administration and a declaration of heirship on her behalf. She asserted in her petition that she was the

acknowledged illegitimate daughter of the deceased and a lawful heir to his \$37,000 estate. The circuit court sustained the motion of certain collateral heirs-at-law to strike and dismiss the Collins' petition, and we granted direct appeal (50 Ill.2d R. 302(b)).

We have permitted the filing of an *amicus* brief in these consolidated cases. The *amicus* has pending in this court a direct appeal involving similar issues. (*In re Estate of Gordon*, No. 47339.) The illegitimate in *Gordon* is a minor. *Amicus* asserts that prior to the death of the unmarried father there had been a judicial order adjudicating paternity and ordering that he support this child.

As accepted by the motions to strike and dismiss the petitions, for the purpose of these appeals Mary Sodermark and Margaret Marie Collins are the acknowledged illegitimate children of the respective decedents, who never married the natural mothers. (*Gertz v. Campbell* (1973), 55 Ill.2d 84, 87.) Thus they have not been legitimized in accord with section 12 of the Probate Act, and under prior case law (*Krupp v. Sackwitz* (1961), 30 Ill. App. 2d 450, *appeal denied*, 21 Ill.2d 621) are not considered heirs of their fathers, who died intestate.

At common law an illegitimate could not inherit. (*Blacklaws v. Milne* (1876), 82 Ill. 505, 506.) By statute the result of this rule was ameliorated. (Ill. Ann. Stat., ch. 3, sec. 12, Historical Note, at 64 (Smith-Hurd 1961); see also 2 Horner, Probate Practice and Estate, secs. 1348, 1350-51 (4th ed. 1960).) In *Smith v. Garber* (1918), 286 Ill. 67, the court, in discussing the predecessor provisions of section 12 of the Probate Act, stated:

"Sections 2 and 3 of our Statute of Descent were enacted for the purpose of obviating the undue severity of the common law and of erecting a rule more consonant with justice to an innocent and unfortunate class. Section 2 * * * abrogates the common law rule that an illegitimate is the child of nobody and could not take property by inheritance, even from its own mother.' (*Robinson v. Ruprecht*, 191 Ill. 424.) Under the common law an il-

legitimate was considered *filius nullius*. (1 Blackstone's Com. *459.) Under the statutes passed in this State in relation to illegitimate children, 'an illegitimate person is recognized as the child of his mother, as regards the descent of property.' (*Miller v. Williams*, 66 Ill. 91.) In *Bales v. Elder*, 118 Ill. 436, this court said that it was the purpose of the legislature in enacting the statute as to illegitimate children, to remove the common law disability of inheritance and place them more nearly on a level with legitimates. (See, also, *Jenkins v. Drane*, 121 Ill. 217; *Chambers v. Chambers*, 249 id. 126.) In *Robinson v. Ruprecht*, *supra*, this court said (p. 433): 'The [rule of the common law] visited the sins of the parents upon the unoffending offspring, and could not long survive the truer sense of justice and broader sense of charity that came with the advancing enlightenment and civilization of the race.' 286 Ill. 67, 70-71.

It is argued in the Sodermark appeal that this court modify the common law rule that an acknowledged illegitimate may not be an heir of the intestate father's estate. She urges that she be allowed to inherit to the extent of a legitimate child. This is not a tenable argument.

For nearly 150 years this State by statute has mitigated the effect of the common law rule prohibiting inheritance by illegitimates. While discussing other Probate Act provisions, this court has held that "The regulation of the descent of property and of the right to devise property as well as the method of conveying and the manner of creating estates and the character and quality of estates created, is purely statutory and entirely within the control of the legislature. [Citation.] Being wholly statutory the rules of descent may be changed by the legislature in its discretion, and conditions or burdens may be imposed upon the right of succession." (*Steinhagen v. Trull* (1926), 320 Ill. 382, 387; see also *Jahnke v. Selle* (1938), 368 Ill. 268, 271.) Moreover, *Miller v. Pennington* (1905), 218 Ill. 220,

involved litigation contesting certain property of the intestate decedent. He had fathered two illegitimate sons by a woman whom he subsequently married. The question presented concerned whether these sons could be deemed to be legitimized and could therefore share as heirs-at-law with the other legitimate children of the father. The descent statute, considered by the court (Hurd's Stat. 1899, ch. 39, sec. 3) in determining whether these sons had been legitimized, is presently incorporated within section 12 of the Probate Act. The court there held that the rights of the sons who had been born illegitimate were to be determined under the pertinent provision of the descent statute. The foregoing authorities support the conclusion that expansion of inheritance rights of an illegitimate child in the estate of the father who dies intestate must be left to legislative modification. Therefore consideration of the applicability of the common law to intestate succession is of no relevance. *Campbell v. McLain* (1925), 318 Ill. 610, 612-13.

Petitioners and *amicus* urge that the statutory scheme which precludes the inheritance by an acknowledged illegitimate from the estate of the intestate father violates the Federal and State constitutional provisions guaranteeing equal protection and due process of law. In so arguing petitioners and *amicus* recognize the possible adverse implications of the United States Supreme Court decision in *Labine v. Vincent* (1971), 401 U.S. 532, 28 L. Ed. 2d 288, 91 S. Ct. 1017.

In *Labine v. Vincent* the acknowledged illegitimate child had been precluded under Louisiana law from inheriting on an equal basis with legitimate children, if the father died intestate. It was argued that this statutory limitation was contrary to Federally secured rights to equal protection and due process. In a 5-to-4 decision the Supreme Court rejected these claims, stating that "the choices reflected by the intestate succession statute are choices which it is within the power of the State to make. The Federal Constitution does not give this Court the power to overturn the State's choice under the guise of constitutional interpretation because the Justices of this Court believe that they can provide better rules."

(401 U.S. 532, 537, 28 L. Ed. 2d 288, 293, 91 S. Ct. 1017, 1020.) The Supreme Court further concluded that Louisiana's intestate succession laws had not created "an insurmountable barrier" to the acknowledged illegitimate child inheriting from the father. Alternatives existed, such as the execution of a will or marriage to the child's mother, which would have obviated the bar to the inheritance. As later explained, *Labine v. Vincent* "reflected, in major part, the traditional deference to a State's prerogative to regulate the disposition at death of property within its borders. * * * The Court has long afforded broad scope to state discretion in this area." *Weber v. Aetna Casualty & Surety Co.* (1972), 406 U.S. 164, 170, 31 L. Ed. 2d 768, 776, 92 S. Ct. 1400.

Under traditional concepts of Federal equal protection a legislative classification will be upheld if it bears a rational relationship to a valid governmental purpose and the burden of rebutting the presumptive validity of the classification rests upon the party challenging its constitutionality. (*People v. Sherman* (1974), 57 Ill.2d 1, 4.) When the classification, however, affects fundamental rights (see *Hoskins v. Walker* (1974), 57 Ill.2d 503, 508) or involves a "suspect classification" (*People v. Ellis* (1974), 57 Ill.2d 127, 131), the burden is placed upon the State to demonstrate that the distinction is justified by a compelling governmental interest.

Petitioners and *amicus* expend much effort in attempting to refute the present application of *Labine v. Vincent*. They maintain that the rational bases suggested in that opinion to justify the classification cannot be applied in these cases. They also urge that other Supreme Court decisions have eroded the validity of that decision.

The Supreme Court noted that Louisiana's intestate succession scheme was rationally based on its interests to encourage family relationships and to establish a method of property disposition. (*Labine v. Vincent*, 401 U.S. 532, 536 n.6, 28 L. Ed. 2d 288, 292 n.6, 91 S. Ct. 1017, 1019 n.6.) Petitioners and *amicus* argue that Illinois statutes fail to disclose this State's interest in the promotion of family relationships as did the Louisiana statute.

We cannot accept this hypothesis. And we do not believe that Illinois has any lesser interest than Louisiana in regulating the transfer of a decedent's property in its jurisdiction. It is our opinion that petitioners and *amicus* have failed to detract from the impact of *Labine v. Vincent* in these regards.

Several Supreme Court decisions have been cited whose thrust is said to have severely lessened the present vitality of *Labine v. Vincent*. Petitioners and *amicus* cite *Levy v. Louisiana* (1968), 391 U.S. 68, 20 L. Ed. 2d 436, 88 S. Ct. 1509, which invalidated a State law precluding illegitimate children from seeking a recovery for the wrongful death of their mother when such an action could be maintained by legitimate children; and *Glona v. American Guarantee & Liability Insurance Co.* (1968), 391 U.S. 73, 20 L. Ed. 2d 441, 88 S. Ct. 1515, which nullified a statute that had been construed as prohibiting the mother of an illegitimate child from maintaining an action for his wrongful death. The Supreme Court, however, expressly found that the rationale of its prior decisions in *Levy* and *Glona* did not extend to the situation presented in *Labine v. Vincent*, 401 U.S. 532, 535, 28 L. Ed. 2d 288, 292, 91 S. Ct. 1017, 1019. Petitioners and *amicus* further cite *Weber v. Aetna-Casualty & Surety Co.* (1972), 406 U.S. 164, 31 L. Ed. 2d 768, 92 S. Ct. 1400, which held that a dependent unacknowledged illegitimate child could not be deprived of workmen's compensation benefits accruing to dependent legitimate children as a result of the death of the natural father; *Gomez v. Perez* (1973), 409 U.S. 535, 35 L. Ed. 2d 56, 93 S. Ct. 872, which precluded a State from denying relief to an illegitimate child seeking support from his natural father when such relief was afforded to a legitimate child; *New Jersey Welfare Rights Organization v. Cahill* (1973), 411 U.S. 619, 36 L. Ed. 2d 543, 93 S. Ct. 1700, which voided certain statutory provisions of a State-aid program to poor families limiting benefits to married couples with minor children, thereby, in effect, denying benefits to illegitimate children; and *Jimenez v. Weinberger* (1974), 417 U.S. 628, 41 L. Ed. 2d 363, 94 S. Ct. 2496, which held unconstitutional a statutory pro-

gram denying benefits to illegitimate children born after the onset of the parent's disability, while permitting benefits to illegitimate children who were similarly born, if the latter group of children could inherit under State intestacy laws, could be legitimated under State law or were considered illegitimate only as a result of a formal defect in their parents' marriage.

We have examined these decisions and do not find the constitutional impact of *Labine v. Vincent* to have been lessened. As previously set forth, *Weber v. Aetna Casualty & Surety Co.* explained *Labine v. Vincent*, and expressed no dissatisfaction with that decision.

In asserting that the present Illinois classification of illegitimates is violative of Federal constitutional principles, petitioners and *amicus* recommend that this court apply the stricter equal protection test which would require the State to justify the classification by a compelling governmental interest. It is claimed that the present classification is racially and sexually discriminatory and that illegitimacy is itself a suspect classification, thereby necessitating application of the stricter constitutional standard.

In support of the position that the statutory framework is racially discriminatory, petitioner in cause No. 47092 sets forth various statistical sources which she says indicate that an excessively disproportionate share of illegitimate children were born to blacks and other minorities as compared to Caucasians. In light of these statistics this petitioner concludes that section 12 of the Probate Act has evolved to the extent that it "fits into a pattern of legislation which often is only a thinly disguised cover for racial discrimination." A comparable claim of racial discrimination, predicated on similar statistics, was presented by the *amicus* in *Labine v. Vincent* with no apparent success. Moreover, section 12 of the Probate Act does not contain any racial classification and affects all members of the class of illegitimates without regard to racial heritage. Such a statute, without more, would not appear in and of itself to substantiate a claim that it is racially discriminatory merely because the bare statistical possibility exists that at any given

time it could incidentally tend to affect to a greater extent a particular racial group within the general class. The alleged deprivation of which petitioner complains is remedied through the simple expedient of testamentary disposition by means of a will. And no claim is advanced that any racial group is restricted in any judicially cognizable manner from utilizing this procedure.

The argument that section 12 sexually discriminates so as to give rise to a stricter approach to Federal equal protection principles is also unpersuasive. We are cognizant of the recent decision wherein the Supreme Court struck down a Social Security provision which had precluded survivor's benefits to an unemployed widower who remained at home to care for his minor child, while permitting such payments to a similarly situated widow. The court there held that this classification was not rational under the statute's intended purpose. (*Weinberger v. Wiesenfeld* (1975), — U.S. —, 43 L. Ed. 2d 514, 95 S. Ct. 1225.) However, while the claim is made that a classification by sex requires a more stringent application of equal protection principles, we find that only four members of the Supreme Court have accepted this position. (*Frontiero v. Richardson* (1973), 411 U.S. 677, 36 L. Ed. 2d 583, 93 S. Ct. 1764 (plurality opinion); see also *Stanton v. Stanton* (1975), — U.S. —, 43 L. Ed. 2d 688, 95 S. Ct. 1373; *Schlesinger v. Ballard* (1975), — U.S. —, 42 L. Ed. 2d 610, 95 S. Ct. 572 (Brennan, J., dissenting); *Kahn v. Shevin* (1974), 416 U.S. 351, 40 L. Ed. 2d 189, 94 S. Ct. 1734 (Brennan, J., dissenting).) We are unwilling to decide that all classifications based upon sex require that the State establish a compelling governmental interest under the Federal equal protection clause.

No decision has been cited in which a classification based on illegitimacy has been expressly held to be a suspect classification. Rather the decisions concerning illegitimacy previously set forth would seem to have been determined on whether or not the classification could be said to be predicated on a rational basis. In *Jimenez v. Weinberger* (1974), 417 U.S. 628, 41 L. Ed. 2d 363, 94 S. Ct. 2496, the Supreme Court stated it need not reach

the argument as to whether a stricter equal protection standard was applicable in order to determine the validity of a classification premised on illegitimacy. Moreover, the *amicus* brief filed in *Labine v. Vincent* suggests the argument was advanced that stricter equal protection principles be utilized when examining a classification based on illegitimacy. Thus for several of the comparable reasons expressed in our discussion of the issues regarding alleged race and sex discrimination stemming from application of section 12 of the Probate Act, we are unable to presently conclude that a classification based on illegitimacy is a suspect classification under Federal constitutional interpretation.

The precise issue set forth in *Labine v. Vincent* is present in these appeals, *i.e.*, can an acknowledged illegitimate be treated differently than a legitimate child and thereby, in effect, be precluded from sharing in its father's estate by State laws governing intestate succession. In each of these specific appeals no "insurmountable barrier" to Mary Sodermark and Margaret Marie Collins sharing in their fathers' estates has been created. In both instances the deceased fathers apparently lived for a substantial number of years. Since Louis Karas was survived by his spouse, he could have devised as much as two thirds of his estate to Mary Sodermark. (Ill. Rev. Stat. 1973, ch. 3, par. 16; see *Montgomery v. Michaels* (1973), 54 Ill.2d 532, 534-5.) Because Robert Woods had no surviving spouse, he could have left his entire estate to Margaret Marie Collins if he had utilized the simple formalities of a will.

We further recognize that the State maintains an interest in prohibiting spurious claims against an estate. The parties to these appeals tend to agree that proof of a lineal relationship is more readily ascertainable when dealing with maternal ancestors. It is suggested that proof of paternal relationship may not be so readily ascertainable but that such considerations should be decided individually on the facts of each case. While establishing paternity in a proceeding to determine heirship is possible, situations may arise which are fraught with fraudulent circumstances. There exists the possibility that an

illegitimate "grandson" may seek to inherit from his "grandfather" who dies not only intestate but also after the death of his own son and without knowledge of the existence of the illegitimate. Similar circumstances might also arise in which illegitimates, claiming a collateral relationship, would seek rights to the estates of paternal intestate kindred. (See generally *Gregory v. County of LaSalle* (1968), 91 Ill. App. 2d 290.) There also may be situations in which a "father's" testamentary disposition is challenged on behalf of an illegitimate child who was born after the will was executed, thereby possibly permitting the child to recover a share of the estate equivalent to that allowed if the "father" had died intestate. Ill. Rev. Stat. 1973, ch. 3, par. 48; 2 Homer, Probate Practice and Estates sec. 1331 (4th ed. 1960).

In summary, to accept the numerous arguments raised by petitioners and *amicus* in regard to Federal equal protection principles would result in this court's placing strictures on *Labine v. Vincent*. "But, of course, a State may not impose such greater restrictions as a matter of federal constitutional law when this Court [United States Supreme Court] specifically refrains from imposing them." (Emphasis in original.) *Oregon v. Haas* (1975), — U.S. —, —, 43 L. Ed. 2d 570, 576, 95 S. Ct. 1215, 1219.

There remains the contention that section 12 of the Probate Act is unconstitutional because it violates State constitutional guarantees that "equal protection of the laws shall not be denied or abridged on account of sex ***." (Ill. Const. (1970), art. I, sec. 18.) In *People v. Ellis* (1974), 57 Ill.2d 127, 132-33, we construed this provision as rendering any classification based on sex to be a "suspect classification," thus subjecting it to "strict judicial scrutiny" and requiring the existence of a compelling State interest to justify the classification. See also *Phelps v. Bing* (1974), 58 Ill.2d 32.

Petitioner in cause No. 47092 first claims that section 12(4) of the Probate Act discriminates against the father and his descendants when his illegitimate child dies intestate leaving no spouse or descendants. If this situation occurs, petitioner says the father and his descend-

ants are precluded from sharing in the child's estate while the mother and her descendants may share in the estate. A comparable attack is made upon sections 12(5) to 12(7), which generally concern inheritance from the estate of an illegitimate by maternal kindred while omitting consideration of paternal kindred. Petitioner also maintains that section 12 requires a mother to draw a will in order to disinherit her children while a father of an illegitimate child, who is not legitimized by the procedures of section 12, need not do so. Conversely, if the father of the illegitimate wishes the illegitimate child to share in his estate he must execute a will, whereas the mother need not resort to this course of action. Finally, petitioner argues that she is injured by limiting her inheritance to the estate of her mother who dies intestate or her maternal ancestors and by precluding her inheritance from her father or his ancestors. She claims that she should either inherit from both or inherit from neither, and she concludes that as a result of section 12 of the Probate Act she is injured by the sexual discrimination against each of her parents.

No contention is asserted that section 12 of the Probate Act results in any sexual discrimination as between similarly situated males and females who seek inheritance from the estates of their fathers or other paternal kindred. Under section 12 no discrimination inures to an illegitimate as a result of the illegitimate's sex. The question therefore presented in whether under these circumstances one may assert a claim of discrimination based upon the sex of another person pursuant to section 18 of article I of the State Constitution.

In our decisions of *Ellis* and *Bing* the individuals were treated differently on the basis of their sex because of classifications in the Juvenile Court Act and Marriage Act. Neither case involved a situation wherein the affected individuals asserted a constitutional deprivation based solely on the sex of another person, as in these appeals. The official explanation of section 18 of article I recites that "no government in Illinois may deny equal protection of the law to anyone because of his or her sex." (7 Record of Proceedings, Sixth Illinois Constitutional

Convention 2688.) This explication indicates that State constitutional issues raising questions of classifications based on sexual differentiation may be raised by individuals who are thereby affected as a result of their own sex. For this reason, we are of the opinion that petitioner's State constitutional claim is without merit.

Amicus argues that both parents have a duty to support a child and if one parent dies the survivor's duty is necessarily increased. *Amicus* says that section 12 invidiously discriminates against the surviving mother in preference to the surviving father of the illegitimate child. It is argued that the father is aided in his obligation of support because the child may inherit from the mother. Conversely, they argue, the mother is not aided and, in fact, is burdened, for the child cannot inherit from the father and support from the father is no longer available. *Amicus* concludes that section 12 "discriminates against women by failing to provide for their children a legal right of inheritance equivalent to that granted to the children of surviving male parents." To buttress this argument *amicus* refers only to sections 9 and 11 of the Probate Act (ch. 3, pars. 9 and 11), which *amicus* asserts are designed to prevent a decedent's closest relatives from becoming wards of the State.

We have examined these provisions and are unable to interpret these sections as intending to create a statutory scheme for financial support. Section 9, in pertinent part, merely says that the Probate Act shall be liberally construed. Section 11 establishes an intestate succession for the devolution of property not involving illegitimates. There is no basis evident from the language employed in either section which permits an interpretation that these provisions were intended to alleviate the possibility that certain close relatives of the decedent would seek public assistance. Obviously the application of section 11 provides the basis wherein certain relatives may assure their living standard or even elevate it by their inheritance. But this provision also allows inheritance to wealthy relations to the exclusion of impoverished individuals who may be only slightly more remote in their relationship to the decedent. Moreover, relations of equal degree sim-

ilarly inherit even though there may exist extreme divergence in their financial status.

Having concluded that the petitioners were not denied equal protection of the law, we do not find that they were deprived of due process of law by the trial courts' refusals to permit a hearing wherein they might seek to establish the paternity of the decedents. *Cf. Stanley v. Illinois* (1972), 405 U.S. 645, 31 L. Ed. 2d 551, 92 S. Ct. 1208.

There remains the contention advanced by petitioner in cause No. 47092 that she has a preference in issuance of letters of administration as set forth in section 96(2) of the Probate Act (ch. 3, par. 96(2)). In determining that petitioner may not inherit from her father under the circumstances presented in this case, we do not believe it logical that she should be allowed to participate in the administration of his estate. See *Myatt v. Myatt* (1867), 44 Ill. 473, 476.

Accordingly, the judgment of the appellate court in cause No. 46986 is affirmed. The judgment of the circuit court of Cook County in cause No. 47092 is affirmed.

Judgments affirmed.

11. OPINION OF COURT, ORALLY DELIVERED

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
SUPREME COURT)

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the following remarks were made by CHIEF JUSTICE UNDERWOOD at the end of the oral argument on September 24, 1975, in case No. 47339—Deta Mona Trimble, et al., appellants, vs. Joseph Roosevelt Gordon, et al., appellees:

“CHIEF JUSTICE UNDERWOOD: Counsel, I think it will not be necessary to hear further argument. The Court has concluded that *Karas* is dispositive of the matter and it is the judgment of the Court that the judgment of the circuit court of Cook County is affirmed.”

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 19th day of November, A.D. 1975.

/s/ Clell L. Woods
Clerk
Supreme Court of the State of Illinois

12. WRITTEN ORDER (DECISION) OF ILLINOIS SUPREME COURT

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
SUPREME COURT)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of September in the year of our Lord, one thousand nine hundred and seventy-five, within and for the State of Illinois.

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER

JUSTICE DANIEL P. WARD

JUSTICE JOSEPH H. GOLDENHERSH

JUSTICE THOMAS E. KLUCZYNSKI

JUSTICE CHARLES H. DAVIS

JUSTICE HOWARD C. RYAN

WILLIAM J. SCOTT, ATTORNEY GENERAL

WILLIAM G. LYONS, MARSHAL

ATTEST: CLELL L. WOODS, CLERK

Be It Remembered, that, to-wit: on the 24th day of September 1975, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

No. 47339

DETA MONA TRIMBLE AND JESSIE TRIMBLE, APPELLANTS

vs.

JOSEPH ROOSEVELT GORDON, ETHEL MAE KING, WILLIAM GORDON, HELLIE MAE GORDEY, AND MARY LOIS GORDON, APPELLEES

APPEAL FROM CIRCUIT COURT COOK COUNTY 74 P 5902

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Circuit Court of Cook County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellees recover of and from the said appellants costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing

is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 15th day of October, 1975.

[SEAL]

/s/ Clell L. Woods
Clerk
Supreme Court of the State of Illinois

13. ORDER OF ILLINOIS SUPREME COURT STAYING
MANDATE

IN THE SUPREME COURT OF ILLINOIS

No. 47339

IN RE ESTATE OF SHERMAN GORDON, Deceased
DETA MONA TRIMBLE, AND JESSIE TRIMBLE,
PETITIONERS-APPELLANTS

—vs—

JOSEPH ROOSEVELT GORDON, ETHEL MAE KING, WILLIAM
GORDON, HELLIE MAE GORDEY, AND MARY LOIS GOR-
DON, RESPONDENTS-APPELLEES

ORDER

This matter coming before the court on the motion of DETA MONA TRIMBLE and JESSIE TRIMBLE, Petitioners-Appellants herein, it is hereby ordered that the mandate of this court, issued to the Clerk of the Circuit Court of Cook County on October 15, 1975, be and is hereby recalled and stayed, pending resolution of the petitioners' application of review of the judgment herein by the Supreme Court of the United States, which application will be promptly made.

/s/ Daniel P. Ward

DATED: Oct. 21-75

Devereux Bowly and Charles Linn
Attorneys for Petitioners-Appellants
Legal Assistant Foundation of Chicago
911 S. Kedzie Avenue
Chicago, IL 60612
638-2343

14. NOTICE OF APPEAL TO UNITED STATES SUPREME COURT

IN THE SUPREME COURT OF ILLINOIS

No. 47339

IN RE ESTATE OF SHERMAN GORDON, Deceased
DETA MONA TRIMBLE, AND JESSIE TRIMBLE,
PETITIONERS-APPELLANTS

vs.

JOSEPH ROOSEVELT GORDON, ETHEL MAE KING, WILLIAM
GORDON, HELLIE MAE GORDEY, AND MARY LOIS GOR-
DON, RESPONDENTS-APPELLEES

NOTICE OF APPEAL

Appellants, DETA MONA TRIMBLE and JESSIE TRIMBLE, appeal to the Supreme Court of the United States from the final judgment of this court entered September 24, 1975, affirming the judgment of the Circuit Court of Cook County declaring DETA MONA TRIMBLE not the heir at law of SHERMAN GORDON, and thus denying her any part of his estate.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2). The basis of the decision against appellants was Illinois Revised Statutes, Chapter 3, entitled "ADMINISTRATION OF ESTATES," Section 12, entitled "Illegitimates." Appellants at all times claimed that the said statute was in violation of the Fourteenth Amendment to the Constitution of the United States. The final

judgment from which the appeal is taken is in favor of the validity of said statute.

Respectfully submitted,

One of the attorneys for
Appellants

Devereux Bowly and Charles Linn
Legal Assistance Foundation of Chicago
911 S. Kedzie Avenue
Chicago, Illinois 60612
638-2343 (312)

James Weill and Jane G. Stevens
Legal Assistance Foundation of Chicago
343 S. Dearborn Street
Chicago, Illinois 60604

John Henry Schlegel
Faculty of Law Jurisprudence
State University of New York at Buffalo
John Lord O'Brian Hall
Buffalo, New York 14260

(Notice of filing and Certificate of Service
omitted in printing)

SUPREME COURT OF THE UNITED STATES

No. 75-5952

DETA MONA TRIMBLE AND JESSIE TRIMBLE, APPELLANTS,

v.

JOSEPH ROOSEVELT GORDON, ET AL.

ON CONSIDERATION of the motion for leave to proceed
herein *in forma pauperis*,

IT IS ORDERED by this Court that the said motion be,
and the same is hereby, granted.

March 22, 1976

SUPREME COURT OF THE UNITED STATES

No. 75-5952

DETA MONA TRIMBLE AND JESSIE TRIMBLE, APPELLANTS,

v.

JOSEPH ROOSEVELT GORDON, ET AL.

APPEAL from the Supreme Court of the State of
Illinois.

The statement of jurisdiction in this case having
been submitted and considered by the Court, probable
jurisdiction is noted.

March 22, 1976